

Read In Open Court on 9/15/23

NTD

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EIS, INC.,

Plaintiff,

v.

INTIHEALTH GER GMBH, WOW TECH
USA, LTD., WOW TECH CANADA, LTD.
AND NOVOLUTO GMBH,

Defendants.

Civil Action No. 19-1227-GBW

NOVOLUTO GMBH,

Counterclaimant,

v.

EIS, INC., EIS GMBH,
TRIPLE A IMPORT GMBH,
and TRIPLE A MARKETING GMBH

Counterclaim Defendants.

VERDICT FORM

When answering the following questions and completing this Verdict Form, please follow the directions provided and follow the Jury Instructions that you have been given. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in the Jury Instructions. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term that appears in the questions below.

As used herein:

1. "EIS" refers to Plaintiff and Counterclaim Defendant EIS, Inc.

2. “Novoluto” refers to Counterclaim Plaintiff and Defendant Novoluto GmbH.
3. “WOW Tech Defendants” refers to Counterclaim Plaintiff and Defendant Novoluto GmbH and Defendants IntiHealth Ger GmbH, WOW Tech USA, Ltd., and WOW Tech Canada, Ltd.
4. “EIS/Triple A Defendants” refers to Counterclaim Defendants EIS, Inc., EIS GmbH, Triple A Import GmbH, and Triple A Marketing GmbH.
5. The “’851 Patent” refers to U.S. Patent No. 9,763,851.
6. The “’061 Patent” refers to U.S. Patent No. 9,849,061.
7. The “’097 Patent” refers to U.S. Patent No. 9,937,097.
8. The “’220 Patent” refers to U.S. Patent No. 11,090,220.
9. The “’418 Patent” refers to U.S. Patent No. 11,103,418.
10. The “Asserted Patents” collectively refers to the ’851, ’061, ’097, ’220, and ’418 Patents.

We, the jury, unanimously find as follows.

ANTITRUST

1. Has EIS proven, by a preponderance of the evidence, that WOW Tech Defendants violated the antitrust laws by enforcing or attempting to enforce fraudulently-procured patents?

(“YES” is a finding for EIS. “NO” is a finding for WOW Tech Defendants.)

	YES	NO
IntiHealth Ger GmbH		✓
WOW Tech USA, Ltd.		✓
WOW Tech Canada, Ltd.		✓
Novoluto GmbH		✓

2. If EIS proven, by a preponderance of the evidence, that WOW Tech Defendants violated the antitrust laws, what is the amount, if any, that EIS is entitled to as lost profits?

\$ _____

3. If WOW Tech Defendants violated the antitrust laws, is EIS entitled its attorneys’ fees?

(“YES” is a finding for EIS. “NO” is a finding for WOW Tech Defendants.)

YES _____ NO _____

**UNFAIR COMPETITION, DECEPTIVE TRADE PRACTICES,
AND TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

4. Has EIS proven, by a preponderance of the evidence, that WOW Tech Defendants violated the Lanham Act?

("YES" is a finding for EIS. "NO" is a finding for WOW Tech Defendants.)

	YES	NO
IntiHealth Ger GmbH		✓
WOW Tech USA, Ltd.		✓
WOW Tech Canada, Ltd.		✓
Novoluto GmbH		✓

5. Has EIS proven, by a preponderance of the evidence, that WOW Tech Defendants violated the Delaware Uniform Deceptive Trade Practices Act?

("YES" is a finding for EIS. "NO" is a finding for WOW Tech Defendants.)

	YES	NO
IntiHealth Ger GmbH		✓
WOW Tech USA, Ltd.		✓
WOW Tech Canada, Ltd.		✓
Novoluto GmbH		✓

6. Has EIS proven, by a preponderance of the evidence, that WOW Tech Defendants violated Delaware unfair competition law?

("YES" is a finding for EIS. "NO" is a finding for WOW Tech Defendants.)

	YES	NO
IntiHealth Ger GmbH		✓
WOW Tech USA, Ltd.		✓
WOW Tech Canada, Ltd.		✓
Novoluto GmbH		✓

7. Has EIS proven, by a preponderance of the evidence, that WOW Tech Defendants tortiously interfered with EIS's business relations?

("YES" is a finding for EIS. "NO" is a finding for WOW Tech Defendants.)

	YES	NO
IntiHealth Ger GmbH		✓
WOW Tech USA, Ltd.		✓
WOW Tech Canada, Ltd.		✓
Novoluto GmbH		✓

NON-PATENT CLAIM DAMAGES

If you answered only "NO" to question number 4-7, go to question 11.

8. If you answered at least one "YES" to question number 4, 6, or 7, what is the total amount of money required to compensate EIS for any actual injury?

\$ _____

9. If you answered "YES" to question number 6 (Delaware unfair competition law) or 7 (Delaware law of tortious interference with business relations), did EIS prove by clear and convincing evidence that Wow Tech acted with malice, willfulness, oppression, fraud, or reckless indifference to the interest of others?

("YES" is a finding for EIS. "NO" is a finding for WOW Tech.)

YES _____

NO _____

10. If you answered "YES" to question number 9, do you award punitive damages and, if so, what amount of punitive damages do you award EIS for WOW Tech's unfair competition or tortious interference with EIS business?

\$ _____

PATENT UNENFORCEABILITY

Your findings for questions 11-18 are in an advisory capacity. Nonetheless, you should treat these as seriously as the other questions you are answering. If you are unable to reach a unanimous verdict on these questions, please record the total number of Yes and No votes and move on to the next question. If you reach a unanimous verdict, please just mark the corresponding answer below.

11. Have the EIS/Triple A Defendants proven, by clear and convincing evidence, that the '851 Patent is unenforceable by virtue of inequitable conduct?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES _____ NO ✓

12. Have the EIS/Triple A Defendants proven, by clear and convincing evidence, that the '061 Patent is unenforceable by virtue of inequitable conduct?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES _____ NO ✓

13. Have the EIS/Triple A Defendants proven, by clear and convincing evidence, that the '097 Patent is unenforceable by virtue of inequitable conduct?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES _____ NO ✓

14. Have the EIS/Triple A Defendants proven, by clear and convincing evidence, that the '220 Patent is unenforceable by virtue of inequitable conduct?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES _____ NO ✓

15. Have the EIS/Triple A Defendants proven, by clear and convincing evidence, that the '418 Patent is unenforceable by virtue of inequitable conduct?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES _____ NO ✓

16. Are the '097, '220, and '418 Patents unenforceable by virtue of infectious enforceability?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES _____

NO ✓

17. As set forth in the patent-misuse instruction, have EIS/Triple A Defendants proven by a preponderance of the evidence that Novoluto has market power in a relevant market, Novoluto's conduct unreasonably restrained competition in the relevant market, and the effect of Novoluto's restraint resulted in an overall harm to competition?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES _____

NO ✓

18. As set forth in the unclean-hands instruction, have the EIS/Triple A Defendants proven by clear and convincing evidence that Novoluto acted in such an inequitable way towards EIS/Triple A Defendants that Novoluto should be denied the relief it seeks in this lawsuit?

("YES" is a finding for the EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

YES 6

NO 2

PATENT INFRINGEMENT

19. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants directly infringed any asserted claim of the '851 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	
5	✓		✓		✓		✓	
6	✓		✓		✓		✓	

20. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants directly infringed any asserted claim of the '061 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	

21. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants directly infringed any asserted claim of the '097 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	

22. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants directly infringed any asserted claim of the '220 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	
16	✓		✓		✓		✓	

23. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants directly infringed any asserted claim of the '418 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	
10	✓		✓		✓		✓	

WILLFUL INFRINGEMENT

24. Has Novoluto proven by a preponderance of the evidence the EIS/Triple A Defendants willfully infringed any asserted claim of the '851 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	
5	✓		✓		✓		✓	
6	✓		✓		✓		✓	

25. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants willfully infringed any asserted claim of the '061 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	

26. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants willfully infringed any asserted claim of the '097 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	

27. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants willfully infringed any asserted claim of the '220 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	
16	✓		✓		✓		✓	

28. Has Novoluto proven by a preponderance of the evidence that EIS/Triple A Defendants willfully infringed any asserted claim of the '418 Patent?

("YES" is a finding for Novoluto. "NO" is a finding for the named EIS/Triple A Defendant.)

CLAIMS	EIS, INC.		EIS GMBH		TRIPLE A IMPORT GMBH		TRIPLE A MARKETING GMBH	
	YES	NO	YES	NO	YES	NO	YES	NO
1	✓		✓		✓		✓	
10	✓		✓		✓		✓	

PATENT INVALIDITY

29. Have EIS/Triple A Defendants proven by clear and convincing evidence that any of the following claims of the '851 patent are invalid?

("YES" is a finding for EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

CLAIMS	INVALID	
	YES	NO
1		✓
5		✓
6		✓

30. Have EIS/Triple A Defendants proven by clear and convincing evidence that any of the following claims of the '061 patent are invalid?

("YES" is a finding for EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

CLAIMS	INVALID	
	YES	NO
1		✓

31. Have EIS/Triple A Defendants proven by clear and convincing evidence that any of the following claims of the '097 patent are invalid?

("YES" is a finding for EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

CLAIMS	INVALID	
	YES	NO
1		✓

32. Have EIS/Triple A Defendants proven by clear and convincing evidence that any of the following claims of the '220 patent are invalid?

("YES" is a finding for EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

CLAIMS	INVALID	
	YES	NO
1		✓
16		✓

33. Have EIS/Triple A Defendants proven by clear and convincing evidence that any of the following claims of the '418 patent are invalid?

("YES" is a finding for EIS/Triple A Defendants. "NO" is a finding for Novoluto.)

CLAIMS	INVALID	
	YES	NO
1		✓
10		✓

PATENT DAMAGES

You are only to answer questions 34-36 below if you have found an asserted claim of the patents-in-suit to be A) enforceable (i.e., NO for questions 11-18), B) infringed (i.e., at least one YES for questions 19-23), and C) not invalid (i.e., NO for questions 29-33).

34. On what date was Novoluto first entitled to damages from EIS/Triple A Defendants?

PATENT	DATE
'851 PATENT	1/12/2021
'061 PATENT	1/12/2021
'097 PATENT	1/12/2021
'220 PATENT	9/28/2021
'418 PATENT	9/28/2021

35. What is the total amount Novoluto has proven by a preponderance of the evidence that it is entitled to be paid as a reasonable royalty for EIS/Triple A Defendants' infringement of the Asserted Patents?

\$ 12,800,000 — (\$12.8 M)

36. Is the amount you found in question 35 a (check one):

LUMP SUM: ☒

RUNNING ROYALTY: ☐

UNANIMOUS VERDICT

UPON REACHING A UNANIMOUS VERDICT ON EACH QUESTION ABOVE, EACH JUROR MUST SIGN BELOW.

We, the jury, unanimously agree to the answers to the above questions and return them under the instructions of this Court as our verdict in this case.

REDACTED

REDACTED

Dated: _____

8-16-23